

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DESCH FRESH PRODUCE COMPANY, LLC,
a Virginia Limited Liability Company,

Plaintiff,

-v-

5:10-CV-596
(NAM/ATB)

EMPIRE FRESH CUTS, LLC., a New York
Limited Liability Company; JAMES R. ZAPPALA,
an individual; SAMUEL A. ZAPPALA, an
individual,

Defendants.

ORDER TO SHOW CAUSE
WITH TEMPORARY RESTRAINING ORDER

The Court has considered the affidavit of Bernard Desch sworn to on May 13, 2010; the affidavit of Paul V. Mullin, Esq., sworn to May 20, 2010 and the exhibits annexed thereto; the complaint and exhibits; and the memorandum of law in support of plaintiff's application. Based upon the foregoing, the Court finds that a proper showing has been made for the relief granted herein.

IT IS HEREBY ORDERED that the defendants, EMPIRE FRESH CUTS, LLC., a New York Limited Liability Company; JAMES R. ZAPPALA, an individual; SAMUEL A. ZAPPALA, an individual, show cause, if there be any, to this Court by submission on papers as ordered herein, before the Honorable Norman A. Mordue, Chief U.S. District Court Judge Court at the United States Courthouse, 100 South Clinton Street, Syracuse, New York, why a preliminary injunction should not be entered to enforce the statutory trust pursuant to Section 5(c)

of the Perishable Agricultural Commodities Act, 7 U.S.C. § 499e(c) by segregating trusts and assets of Empire Fresh Cuts, LLC., and any further relief as the Court may deem proper; and it is further

ORDERED, that defendants serve and file any opposition to the motion for a preliminary injunction on or before June 1, 2010; and it is further

ORDERED, that plaintiff serve and file any reply papers on or before June 4, 2010; and it is further

ORDERED, that no personal appearance is required, papers will be taken on submission; it is further

ORDERED that pending further order of the Court, the defendants, their subsidiaries, assigns, agents, officers, directors, members and any person or entity having notice of this Order are temporarily restrained and enjoined from dissipating, paying over or assigning any PACA trust assets to any creditor, person or entity.

Service of a copy of this Order and a copy of the papers upon which it is granted by service upon the defendants, or their attorney who agrees to accept service on their or its behalf, on or before May 24, 2010, by personal delivery or overnight courier shall be deemed sufficient service.

IT IS SO ORDERED.
May 21, 2010
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge